IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Guru Kripa Intt. Udyog & Others Vs. State of Rajasthan & Others
(S.B. Civil Writ Petition No.1672/2007)

AND

M/s Vishwas Intt Udhyog & Others Vs. State of Rajasthan & Others
(S.B. Civil Writ Petition No.3519/2007)

DATE OF ORDER : August 08, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Rajesh Kumar/Mr. G.J. Gupta for the petitioners.
Mr. Shyam Ladrecha for respondent State.
Mr. Anil Bhansali for Mr. N.M. Lodha for respondents No.3 to 7.

BY THE COURT :

Amendment application filed by the petitioners in S.B. Civil Writ Petition No.1672/2007 is allowed. The amended writ petition has already been filed. The same is hereby taken on record.

Heard learned counsel for the parties.

Both these writ petitions involve identical question and, therefore, they are disposed of by this common order. For the sake of convenience, facts of S.B. Civil Writ Petition No.1672/2007 are taken into consideration.

In both these writ petitions, claiming benefit of exemption under notification dated 27.03.1995 (Schedule-A appended to the writ petition) the petitioner small scale industries prayed for quashing notice Annex.-P/7 issued by the Assistant Commercial Taxes Officer, Sriganganagar on various dates between 02.11.2006 and 01.03.2007 as well as impugned notices Annex.-P/8 issued by respondent Commercial Taxes Department and further prayed that the respondents may be restrained from taking any action for recovery of sales tax against the petitioners. It is further prayed that respondent No.2 may be directed to make arrangement for issuance of the notification as per requirement of notification dated 27.03.1995 and the respondent Commercial Taxes Department may be restrained from effecting recovery from the petitioners till the registration certificate is issued by respondent No.2. It is also prayed that it may be held that the petitioners are fully entitled to exemption benefit under notification dated 27.03.1995 and the same is not hit adversely by the subsequent notification dated 22.05.2003.

According to the petitioners, vide notification dated 27.03.1995 exemption was granted from tax with immediate effect and for the same the said notification was issued in exercise of the powers conferred by Section 4 of the Rajasthan Sales Tax Act, 1954 (in short, "the Act of 1954" hereinafter); and, in supersession of all notifications issued in this behalf, it is provided that the State Government exempts from tax with immediate effect the sale of products manufactured in the State and sold by the institutions, cooperative societies and individuals registered under the Act of 1954 and also with the Khadi & Village Industries Commission constituted under the KVIC Act, 1956 (Central Act No.61 of 1956) or the Rajasthan Khadi & Village Industries Board constituted under the RKVI Board Act, 1955 (Rajasthan Act No.5 of 1955) and in whose favour certificates of registration have been issued by the authorities competent to do so on the condition that their annual gross turn over does not exceed Rs.30,00,000/- for individuals and Rs.2,00,00,000/- for others. Where the annual turn over exceeds these limits, tax shall be levied only on the turn over in excess of these limits.

According to the petitioners, they were availing exemption and the same was provided by the Department to the petitioner

firms from time to time; but, abruptly, impugned notices were issued by the Commercial Taxes Department to the petitioner in which it is desired from them that for availing exemption benefit under the notification dated 27.03.1995 they are required to file registration certificate as provided in the notification from KVIC/RKVI Board and, in absence of that, they are not entitled to get any exemption. The notice further called upon the petitioners to attend the office of the Assistant Commercial Taxes Officer, Dn.-I Circle-B, Sriganganagar. The petitioners have preferred the writ petition challenging the said notice on the ground that there is recommendation issued by the Rajasthan Khadi & Gramodyog Board, Jaipur in which it was verified that each petitioner firm is doing business of sale of products manufactured in the State and their firms are defined as industry under the Act of 1956 and they are small scale producers and doing business of the sale of those commodities, therefore, they may be given the tax exemption certificates.

It is contended by learned counsel for the petitioners that there is no provision in the Act of 1956 and the Act of 1955 for registration of the industries and therefore the KVIC and RKVI Board only recommend their cases to the Commercial Taxes Department for exemption under the notification dated

27.03.1995. Learned counsel for the petitioners invited attention of the Court towards communication dated 15.06.1995 in which the Secretary, Rajasthan Khadi & Gramodyog Board, Jaipur made a request to the the Commissioner, Commercial Taxes Department, Government of Rajasthan, Jaipur mentioning that small scale industries owned by institutions, cooperative societies and individuals may be given exemption from sales tax because for the first time circular was issued by the Khadi & Village Industries Commission on 27.03.2003 for issuance of registration certificates for the units financed under the REGP Gramodyog Rozgar yojana, however, no final decision has been taken by the Commercial Taxes Department and the matter is still pending. It is prayed on behalf of the petitioners that the respondents may be directed to grant exemption from tax under the RST Act 1954 in pursuance of the notification dated 27.03.1995 because the whole purpose of issuing the notification is to protect the small scale industries of the village area and the State Government has taken decision for the welfare of the village industries constituted under the Khadi & Village Industries Act and under the Rajasthan Khadi & Village Industries Board Act, therefore, the condition imposed in the notification that they should be registered under the aforesaid Acts which is not

provided in the Acts is required to be waived and, therefore, the recommendations made by the Board is required to be accepted for exemption. It is, therefore, prayed that the Commercial Taxes Department may be directed to grant exemption to the petitioner units under the notification dated 27.03.1995.

I have carefully considered the submissions and perused the record of the writ petition alongwith Schedules appended thereto.

It may be observed at the outset that there is no power conferred upon the Court to legislate the statute. Function of the legislature cannot be usurped by the Courts. Therefore, the notification issued by the Department is required to be seen. The notification dated 27.03.1995 reads as under :

> "S.O.404.-In exercise of the powers conferred by S.4(2), RST Act, 1954, and in supersession of all notfns issued in this behalf, the State Govt. (.1.) hereby exempts from tax with immediate effect, the sale of products manufactured in the State and sold by institutions, co-operative societies and individuals registered under the said Act and also with the K.V.I.C. Constituted under the Khadi and Village Industries Commission Act, 1956 or the R.K. & V.I. Board constituted under the Rajasthan Khadi and Village Industries Board Act, 1955, and in whose favour R.Cs. Have been issued by the authorities competent to do so, on the condition that their annual gross turnover does not exceed Rs.30 lacs (for individuals (and Rs.two cores for other.) Where the annual turnover exceeds these limits, tax shall be levied only on the turnover in excess of such limits.

> The condition "manufactured in the State" being ultra vires of Arts.301 and 304 was quashed: (1997) 20 TW 446 janta Udyog Samiti v. State of Rajasthan."

Upon perusal of the above notification, it is clear that the benefit of this notification is available only to those industries in whose favour there is registration under the Rajasthan Sales tax Act, 1954 and also registration with the KVIC constituted under the Khadi and Village industries Commission Act, 1956 or the RK & VI Board constituted under the Rajasthan Khadi & Village Industries Board Act, 1955 and in whose favour the RCs have been issued by the authorities competent to do so. That too, on the condition that their annual gross turnover does not exceed Rs.30 lacs; meaning thereby, at the time of issuing such notification, the benefit was extended to the industries who have registration under the RST Act 1954 and also with the KVIC constituted under the Khadi and Village industries Commission Act, 1956 or the RK & VI Board constituted under the Rajasthan Khadi & Village Industries Board Act, 1955. But, the petitioners' contention is that there is no provision in these Acts for issuing registration certificates and as such the Commission and Board only issue recommendation to the Commercial Taxes Department for granting exemption under the notification dated 27.03.1995 and since 1995 the respondent Commercial Taxes

Department was granting them benefit of exemption. But, for the first time, now the impugned notices have been issued and, in the absence of the registration certificate, the benefit of exemption is sought to be denied to them and the Department has decided to levy tax against the petitioner firms.

Learned counsel for the petitioners has also invited attention of the Court towards the fact that only in Sriganganagar district these notices have been issued but large number of industries in the State are continuing to draw the benefit of the notification dated 27.03.1995. According to learned counsel for the petitioners, the petitioner units have been picked and chosen by the respondent department and though the some of the petitioners also filed reply but without considering their reply the department is proceeding to recover the said amount of tax.

In my opinion, the petitioners are first required to file their detailed reply to the notice and are required to set up their case before the respondent Department. It is necessary for the petitioners to bring it to the notice of the authorities concerned in the Commercial Taxes Department which has issued the impugned notices that there is no provision for issuing the RCs prior to 2003 and, therefore, the decision of the Department for

requiring the petitioners to file RCs. is totally unwarranted. Similarly, if the Khadi and Gramodyog Board recommends grant of the benefit of exemption under the notification issued by the State Government, these facts are required to be impressed upon the concerning authority who has issued the notices because it is for the Department to take the final decision whether exemption can be given upon the recommendation made by the Khadi and Gramodyog Board under the notification dated 27.03.1995. In this matter, admittedly the petitioners have been availing the benefit of exemption and, now, the final decision is required to be taken by the Commercial Taxes Department.

Therefore, in the interest of justice, these writ petitions are disposed of with a direction to the petitioners to file detailed reply to the impugned notices before the authority concerned who issued the notices raising all the pleas and grounds, within a period of one month from today. It is also expected of the Commissioner, Commercial Taxes Department to consider the recommendations made by the Rajasthan Khadi & Gramodyog Board, Jaipur. Upon filing the reply, the authority who has issued the notices to the petitioner units may decide the case for exemption under notification dated 27.03.1995 by a speaking

order, within two months thereafter. It is desirable that before final decision is taken in the matter, the Commissioner Commercial Taxes Department shall consider and decide the question of recommendation Annex.-P/12 dated 15.06.2003 sent by the Secretary, Rajasthan Khadi Gramodyog Board, Jaipur to the Commissioner, Commercial Taxes Department with regard to granting exemption from tax to these institutions and, thereafter, the matter of individual petitioners may be decided as per their reply filed in pursuance of the notices issued to them.

Till the final decision is taken by the authority concerned, the stay order granted by this Court shall continue and no coercive action shall be taken against the petitioner institutions.

(Gopal Krishan Vyas) J.